

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Waiver by)	
)	
Newtown Public Schools)	NEC.471.01-20-00.5100049
Newtown, Connecticut)	NEC.471.01-20-00.5100050
)	NEC.471.01-20-00.5100051
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: February 13, 2002

Released: February 15, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Newtown Public Schools (Newtown), Newtown, Connecticut.¹ Newtown seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism for Funding Year 3 (July 1, 2000-June 30, 2001).² For the reasons set forth below, we deny Newtown's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ The Administrator must post the FCC Form

¹ Letter from John R. Reed, Newtown Public Schools, to Federal Communications Commission, filed March 30, 2001 (Waiver Request).

² See Waiver Request. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. See 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶ The Commission's rules allow the Administrator to implement an internal filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁷ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 3, tens of thousands of applicants successfully filed their FCC Forms 471 within the filing window.

3. Newtown filed its Funding Year 3 FCC Forms 471 on January 20, 2000, one day after the filing window closed on January 19, 2000.⁹ Newtown states that it left the forms in a Federal Express mailbox on January 18, 2000, for overnight delivery, but that due to inclement weather, it appears that Federal Express was not able to pick up the application for delivery that day.¹⁰

4. We conclude that Newtown has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹¹ In requesting funds from the schools and libraries universal service support mechanism, the applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.

5. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. The Commission has consistently denied requests for waivers of filing windows based on inclement weather, stating that such events as severe snow storms or fog, while unexpected, are "reasonably foreseeable," and advised that applicants that wait until the end of the filing period risk such delivery failures.¹² In a recent order, the

⁵ 47 C.F.R. § 54.504(b)(3), (4); § 54.511.

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. § 54.507(g).

⁹ FCC Forms 471, Newtown Public Schools, filed January 20, 2000.

¹⁰ Waiver Request.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² See, e.g., *Request for Review by Stephen-Argyle Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-

Commission granted a waiver of the FCC Form 471 filing window for certain applicants in the first three program funding years that mailed their applications at least three days before the filing deadline, or the day before via guaranteed overnight courier.¹³ Newtown states that it was “unable to resolve” with Federal Express whether the carrier picked up the package containing the application in a timely manner on January 18, 2000. Because Newtown is unable to present the evidence necessary for granting Newtown relief under the terms of *Hardee County*, we are unable to find for Newtown in the instant Waiver Request

6. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.¹⁴ Thus, in order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. Here, Newtown fails to present good cause as to why it could not timely file its application. We therefore must deny the Waiver Request.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Newtown Public Schools, Newtown, Connecticut, on March 30, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

228975, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15,879 (Com. Car. Bur. 2001)(denying waiver request where application was untimely due to blizzard).

¹³ See *Request for Review by Hardee County School Board et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2978 (Com. Car. Bur. rel. December 21, 2001) (*Hardee County*).

¹⁴ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000) para. 8 (“In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.”).